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IN THE

Supreme Court of the United States

OCTOBER TERM 1963.

No. 146

BRYAN W. NICKERSON, JR.,

Petitioner,

vs.

THE BEARFOOT SOLE CO., INC.
THE BEARFOOT AIRWAY CORP.,

Respondents.

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

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Petitioner prays that this Court grant rehearing of its order of October 14, 1963, denying petition for writ of certiorari, and that a writ of certiorari issue to review the judgment of the Court of Appeals of the Sixth Circuit in the above entitled case as prayed for in the petition filed May 21, 1963, herein.

STATEMENT

If your Petitioner is being presumptuous in thinking that the Supreme Court would want to review this case, he prays that he has not also taxed the Court's patience by being persistent.

Tact is desirable, indeed necessary, in all dealings between men, but sometimes the point can become lost in tactfulness.

Petitioner is, therefore, restating the point, perhaps less tactfully, but to the best of his ability. And, it should be added, with complete respect for the Court of Appeals for the Sixth Circuit.

The point is that there is something *profoundly wrong* with the decision of the Circuit Court. Petitioner failed, persuasively, to make this point in the petition for certiorari, for once the Supreme Court becomes cognizant of this fact it would know that herein involved is a matter so intrinsic to functional jurisprudence, and when manifested in a decision, so adverse to truth and justice, that it is frightening. For when a court accepts arguments of counsel at their face value and disregards the real truth as found in the record which is contra to that argument, justice becomes a pawn of clever lawyers. The implications of deciding cases in this manner are chaotic.

The sign of justice is the traditional scale symbolizing the weighing of facts. These facts are obtained from arguments of counsel and considered in the light of the record. Adapting arguments that do not find support in the documents, exhibits, and facts of record, could make a mockery out of truth and justice.

By their creation, the circuit courts are speaking for the Supreme Court. Would the Supreme Court readily accept arguments of counsel, *per se*, without confirming them in the records? — of course not.

Without knowing the cause, the effect is indisputably clear: the Circuit Court accepted and unqualifyingly adopted, at face value, the arguments of the counsel for the Defendants. The Circuit Court disregarded the truth as contained in the record in the form of documents, exhibits, etc.

That the above claim is applicable to the present opinion is discussed at length but less obtrusively in errors 1 thru 12, Pages 9 to 19, of the petition for certiorari, and they are to supplement this present petition. But now there is an absolute means of proof not so vulnerable to mis-interpretation. This new proof is so deceptively simple that your Petitioner, after reviewing the opinion with a fine tooth comb, missed it at first. It seemed to come in a sense of

retrospection and was confirmed in the basement of the Supreme Court building upon inspection of Defendant's side walls mounted on tires and wheels.

This proof deals with the question of infringement and establishes the grave claim of your Petitioner that the Circuit Court has violated section 5, among others, of the Canons of Judicial Ethics. Canon 5 states in part: "... and diligent in endeavoring to ascertain the facts." What is more, the Circuit Court has violated an American's semantically bred sense of right and wrong.

To escape the responsibility of infringement, the Defendants created a myth relative to the major function of their side wall. This myth, called a lateral connecting bridge, was not fully exploited at the trial, and with good cause, for as it turned out the trial judge saw through their entire fabricated case and found the patent valid and infringed.

It was a different story in the appeal, however, for this myth became full blown, and the counsel for the Defendants stressed this lateral brige as a departure from the Petitioner's patent in suit as a new means for keeping the side wall inwardly towards the tire. The myth was stressed in the brief to the Circuit Court to the extent of being forcibly restated on six different pages of that brief. This is probably best summed up in these words:

> "The Bearfoot side walls departed sharply from the teachings of Nickerson by incorporating the lateral connecting bridge to space the base of the side wall away from the tire immediately above the rim, and thereby assure contact between the tire and the outer portion of the side wall.
>
> "The Bearfoot side walls do not have the same or equivalent method, means and mode of operation as does the Nickerson side wall."

This myth was completely and unquestionably accepted by the Circuit Court echoing in two separate places the language of the Defendant's counsel. The Circuit Court said: (Decision, Page 36, Key 20)

> "But we are clearly of the view that the Bearfoot side wall as appears from the foregoing, because of its

lateral bridge, resulting in the side wall being spaced away from the tire immediately above the rim, and assuring contact between the outer part of the side wall and the tire, accomplishes its result by a substantially different principle, means, and mode of operation, and in a substantially different way, than Nickerson, and hence, does not in any way infringe the Nickerson Patent."

Proof and the point of the fact to which Petitioner is directing the Supreme Court's attention lies in the basement of the Supreme Court building in the form of five of Defendant's side walls.

Petitioner begs the Court's indulgence to the degree of checking these exhibits for they are the keystone to this present petition.

Keeping in mind the nature of the bridge as defined in the words of the Circuit Court and illustrated in Appendix 122a (bottom), an examination of the side walls reveals no lateral bridge except in part in an area of two of the side walls where it is obvious that the side wall is not assembled properly, or has been squeezed out of position by the action of the tire and rim. And therein lies the subtleness of the error, for there is just enough of a bridge in part of two of the side walls to *superficially justify* adaptation of the bridge myth. The majority of the side walls show no bridge, especially in the early models disproving the mythical bridge theory completely. The bridge would have to be present in all the side walls, particularly in the early models, and function as the major means of keeping the side wall towards the tire to be correctly called the new mode of operation.

An open mind, upon thoughtfully examing the Defendant's side wall, could easily see that the side wall has been distorted from its initial cross-sectional shape and is tending towards the tire because of this distortion as first disclosed in Petitioner's patent. This is their true mode of operation and the *bridge neither exists in reality nor functions as stated.*

A REHEARING IS BEING SOUGHT FOR THE FOLLOWING REASONS

It might well be that herein lies one of the most significant points the Supreme Court will be asked to examine this term, for we have here, not the question of how the Constitution or statutes are to be applied or interpreted in a given issue, but the far more important matter of the methods by which the interpretations and adjudications are to be made. As an example: The history books one hundred years hence may devote a paragraph to whether or not a Bible was permitted to be read in a classroom, but the methods and processes used for determining that issue will be responsible for whether or not that history book is even written or that Bible printed.

Surely the manner of deciding cases as characterized by this opinion is not one readily acceptable to the Supreme Court, which is responsible for the integrity and reputation of the judiciary, for when a judicial body does not observe the basic requirements of jurisprudence, it ceases to be a court of law and becomes instead man usurping the rights of other men.

Your Petitioner is not clutching at straws in this petition. This is a deadly serious approach to an equally serious matter. Petitioner would not make claim herein made if he were not on firm ground and knew that under the facade of a just decision lies the real truth of the matter which on all the crucial matters is contra to the opinion of the Circuit Court.

Petitioner has become indebted and sacrificed much to make this appeal, it was not frivolously taken. Although Petitioner has been softened by adversity, he is not beaten into resignation by losing this one battle for there are other battlegrounds.

The patent in suit is being infringed on a national scale and Petitioner, lacking counsel or funds, is proceeding, *pro se*, to seek redress for this infringement in other circuits. Although the Sixth Circuit has erred, Petitioner retains his faith in American justice, and knows that eventually a circuit court will render a just decision concurring with the District Court in Ohio, and find the patent valid and infringed. The

Petitioner will then again attempt to obtain certiorari from the Supreme Court on the less difficult and more easily proven grounds of conflict between circuits.

The Supreme Court could expedite the conclusion of this case and save unnecessary litigation by returning it to the Circuit Court and directing that court to review this case in the light of the truths of record. But be that as it may, should the Supreme Court decide not to act on this petition, Petitioner is still selflessly concerned less the condition that produces this very inaccurate decision manifest itself in a capital case.

Perhaps the Supreme Court could encourage the Court of Appeal for the Sixth Circuit to seek some insight into its processes of arriving at opinions.

CONCLUSION

For reasons set forth above and in the petition for certiorari, it is respectfully urged that rehearing be granted and that, upon such rehearing, a writ of certiorari issue to the Court of Appeals for the Sixth Circuit.

Respectfully submitted,

Petitioner

AFFIDAVIT OF PETITIONER

I hereby swear that the foregoing petition for rehearing is presented in good faith and not for delay, and is restricted to grounds specified in Rule 58 of the rules of this Court.

Petitioner